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September 27, 1996

VIA FEDERAL EXPRESS OVERNIGHT MAIL

Office of the Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, D.C. 20554

Re: In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996
FCC 96-325; CC Docket No. 96-98
In the Matter of Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers
FCC 96-325; CC Docket No. 95-185

Dear Secretary:

Pursuant to 47 C.F.R. Section 1.429, enclosed is the original and 11 copies of the Petition for Reconsideration of the Washington Utilities and Transportation Commission (and two copies marked "Extra Public Copy") regarding the above referenced matter.

Very truly yours,

STEVEN W. SMITH
Assistant Attorney General

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Enclosures

FCC 96-325

Before the
Federal Communications Commission
Washington, D.C. 20554

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	)	
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	)	
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PETITION FOR RECONSIDERATION

OF

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

I. Introduction

Pursuant to 47 CFR § 1.429, the Washington Utilities and Transportation Commission (UTC) petitions for reconsideration of the FCC's First Report and Order in CC Docket No. 96-98, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (FCC Order). The Washington UTC is the state regulatory body with the jurisdiction over, among other things, the rates, services, facilities and practices of all telecommunications companies operating within the State of Washington (RCW 80.01.040). The UTC is a "State Commission" within the meaning of 47 USC § 153.

As a threshold matter, the Washington UTC notes that it does not agree with the FCC's interpretation of its jurisdiction under Section 2(b) of the 1934 Communications Act.[1] The FCC's expansive reading of its authority under the 1996 Act impermissibly interferes with the authority of the states over intrastate telecommunications matters, including the setting of rates. While the Washington UTC differs with the FCC on jurisdiction, this petition for reconsideration is based on other policy and practical concerns. The UTC asks that the FCC reconsider its position in two major areas: (1) the requirement of geographic deaveraging; and (2) the rules governing intrastate access charges.

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[1] *See* May 15,1996, Comments of the Washington Utilities and Transportation Commission in this proceeding, pp. 4-12.

wide average retail rate.[2] This yields a result consistent with the principle announced in the Act.

It is the states which will continue to have the responsibility for setting retail local rates. States must do so consistent with the comparability requirements of the federal Act. In setting local rates, therefore, states will be balancing the federal Act's requirement that prices for interconnection be cost-based on the one hand, against the requirement that retail rates and service be reasonably comparable in rural and urban areas. The FCC rules may skew the balance by placing undue emphasis on cost factors at the expense of the rate comparability provisions of the Act. Overall, the goals of the 1996 Act are furthered more effectively, and in a more integrated fashion, by allowing each state to find its own balance between deaveraging and retail rate levels.

B. The "three-zone" requirement is not appropriate where proxies are employed.

The FCC order and rules do not provide an adequate basis for the determination of zone-based rates in the event that the FCC proxies are used. The fundamental problem with the rule as applied in the proxy setting is that the setting of zone prices is inconsistent with the premise under which proxies are used in the first place - that insufficient information is available for the state commission to set rates based on cost. If a state commission does not have the

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[2]WUTC Docket No. 950200, 15th Supplemental Order, at pp. 106-107.

cost information required to set prices, it is unclear how it will have adequate cost information to determine a basis for the creation and pricing of zones. The FCC order is silent as to how this should be accomplished. Therefore, the UTC requests that the FCC withdraw the requirement of zone pricing. If the FCC does not withdraw this requirement, it should specify how the states are to comply with zone pricing in the absence of cost information. The UTC, however, strongly prefers the withdrawal of the zone pricing requirement.

C. The selection of three zones for the setting of prices is arbitrary.

The order states, in pertinent part:

> The record reflects that at least two states have implemented geographically-deaveraged rate zones. These rate zones have generally included a minimum of three zones. In the *Expanded Interconnection* proceeding, the Commission also permitted LECs to implement a three zone structure. *We conclude that three zones are presumptively sufficient to reflect geographic cost differences in setting rates for interconnection and unbundled elements,* and that states may, but need not, use these existing density-related zones. . . .

FCC Order, ¶ 765 (emphasis added). The FCC order provides no rationale for the selection of three zones, except that the number three has been used in other settings. The order does not explain why three zones were selected in the other proceedings, nor why the rationale from the other proceedings should have any application here. Given the many differences between and within states, the selection of a single minimum number of zones "presumptively" applicable to all states appears arbitrary. The order fails to explain why a state should not be

permitted to determine that it has two zones for this purpose, or even a single zone.

D. No definition is provided for the term "geographic."

The FCC order requires "geographic" deaveraging but does not provide a definition of the term "geographic." The term "geography" is defined in Webster's dictionary as:

> "a science that deals with the earth and its life; *esp.* The description of land, sea, air, and the distribution of plant and animal life including man and his industries with reference to the mutual relations of these diverse elements...."[3]

The term "geographic," in turn is defined as: "1: of or relating to geography...2: belonging to or characteristic of a particular region."[4]

Section 51.507(f) states that commissions shall establish different rates for elements "in at least three defined geographic areas within the state to reflect geographic cost differences." Paragraph 765 of the order adopts the presumption that three zones are sufficient "to reflect geographic cost differences" in setting rates. The only reference to a geographic criterion in the order is the approval of "these existing density-related rate zones." Although the text is unclear, this appears to be a reference to the zones approved in the *Expanded Interconnection*

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[3] Webster's Third New International Dictionary, Merriam-Webster, Inc., 1981.

[4] *Id.*

order. It is not apparent from the order or the rules how access line density translates to a "defined geographic areas"

According to the standard definition, the FCC rules would seem to require that state commissions create zones on the basis of "geography," for example, according to natural boundaries such as mountain, valley, or coastal regions, on the basis of costs characteristic of those areas. Another possibility is that the term could encompass definition of zones according to settlement patterns, such as urban or rural, or by soil types or climate zones. It may well be that the most salient geographic factor in determining the cost of local loops is distance from the central office. Therefore, the most appropriate zones may well be distance-sensitive rather than density-sensitive. Individual states should have the flexibility to make such a determination. The discussion of deaveraging in the order gives no guidance about the way in which the term is to be applied.

Paragraph 765 gives states permission to establish more than three zones "where cost differences in geographic regions are such that it finds that additional zones are needed to adequately reflect the costs of interconnection and access to unbundled elements." The use of the term "region," at a minimum, creates the implication that some geographic criteria are to be used which are external to the telecommunications network itself. No justification is offered for why a state, after having considered its own geographic factors, may not conclude that fewer than three zones are appropriate. In any event, the order does not shed any light

on how such "regions" are to be defined or whether a "zone" is the equivalent of a "geographic region."

While the FCC could attempt to define what it means by "geographic area" or "geographic region" with greater specificity, the exercise may in the end be counter-productive. The difficulty of making such distinctions and applying them in a rational way across the entire country is evident. The lesson is not that FCC should determine in painstaking detail how "regions" or "areas" are determined, but that the FCC should leave these determinations to the states. States are in a far better position to determine the number of zones which should be established, as well as to define the criteria which will be employed.

In summary, the UTC requests that the FCC reconsider its zone requirement for pricing. The FCC should allow, but not require, the states to use geographic zones as a rate structure requirement. In the alternative, should the FCC decide to retain the requirement, the FCC should clarify the definition of "geographic," explain how states without adequate cost information are to determine cost-based zones, and clarify the relationship between the deaveraging requirement and other provisions of the Act which appear to encourage rate averaging.

III. Intrastate Access Charges

Section 51.515 of the FCC's interconnection rules prohibits incumbent LECs from assessing access charges on most unbundled network elements. Paragraph (a) provides this exemption for purchasers of unbundled network

elements and applies it to interstate access charges and "comparable intrastate access charges."

For an interim period, incumbent LECs are allowed to assess the common carrier line charge and 75% of the interconnection charge on "interstate minutes of use traversing ... unbundled local switching elements." 47 CFR § 51.515(b).

Paragraph (c) of Section 51.515 allows incumbent LECs to apply, for an interim period, intrastate access charges on "intrastate toll minutes of use traversing such unbundled local switching elements." The charges that may be applied are "intrastate access charges comparable to those listed in paragraph (b) and any explicit intrastate universal service mechanism based on access charges."

The UTC urges the FCC to reconsider its rules to the extent they apply to intrastate access charges and intrastate minutes of use and instead adopt a rule that applies only to the interstate rates that have been established at the federal level. Leaving aside the question of the FCC's legal authority to determine what intrastate charges may apply to intrastate telecommunications traffic, there are strong practical and policy reasons for continuing to allow states to set intrastate rates and determine the services to which those rates apply.

A. A Federal rule on intrastate access charges is impractical to apply.

A very practical reason to limit Section 51.515 to interstate access charges is that intrastate access charges often have a different structure than interstate

access charges, making it difficult to determine what is "comparable" and what is not. We are not familiar with every state's access charge regime, but the FCC should understand that even within the state of Washington, intrastate access charges differ widely in both structure and level among incumbent LECs. While LECs in this state have an intrastate common carrier line charge, no LEC in this state has yet implemented local transport restructure (LTR).[5] Since the effect of LTR is to remove costs related to transport from the switching rate, there is no intrastate charge comparable to the LTR-type interstate interconnection charge.

Moreover, even if an intrastate LTR has been implemented, the level of the intrastate interconnection charge may be quite different from the interstate charge. In Washington state, for example, the UTC approved an intrastate LTR for U S WEST, but the restructured rates include no residual-type interconnection charge and no CCLC.[6] It is virtually meaningless to say that an incumbent LEC can assess the intrastate CCLC and 75% of the intrastate interconnection charge when neither rate element exists in the intrastate tariff.

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[5]The WUTC approved a local transport restructure for U S WEST Communications in Docket No. UT-950200, but that portion of the WUTC order was stayed on appeal by U S WEST. GTE-Northwest currently has pending a local transport restructure in Docket No. UT-961040.

[6]WUTC Docket No. UT-950200, 15th Supplemental Order at p. 114.

B. Intrastate access charges are best addressed by State commissions in the context of all other intrastate rates.

In addition to those practical reasons, there are sound policy reasons for the FCC to remain silent on the application of intrastate charges to purchasers of unbundled network elements. As the FCC is well aware, any decision about the regulated rates for a particular service must account for the effect on other services and the overall finances of the regulated company. It can be assumed that, when the FCC determined it reasonable to assess the CCLC and 75% of the interconnection charge on purchasers of unbundled switching, it did so with an understanding of the interstate revenue effect on incumbent LECs.

The FCC, however, has not in the past set intrastate rates and cannot be expected to have the same level of understanding of LECs' intrastate revenues and expenses that it does for interstate services. Rather, it is the state commissions that have that responsibility and understanding. We submit that it is a better policy to have state commissions make the determination of what intrastate rates should apply, particularly since it is state commissions and not the FCC that will have to deal with the revenue and profitability implications of those decisions.

Washington state's recent experience with intrastate access charges provides a good example of why the FCC should reconsider and leave the application of intrastate charges to the state commissions. Earlier this year, the UTC ordered U S WEST to lower intrastate access charges by 45%. While toll

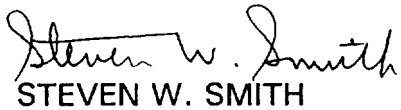
and business exchange rates were lowered too, the effect of this restructuring was to reduce substantially the proportion of shared and common costs recovered from access charges. We submit that the fact that U S WEST's rates have been realigned is a salient factor that should be considered in determining whether intrastate access charges should be applied to unbundled switching or other interconnection rates. The overall rate structure of the company matters in such a decision, and we ask the FCC to give state commissions the discretion to consider such factors. The FCC can do this by reconsidering its decision to decide when intrastate charges apply and when they do not. The FCC has a legitimate policy interest in ensuring that federal policies are not hindered by inconsistent state rules, but the WUTC believes the current rule reaches further into the realm of intrastate ratemaking than is necessary to protect that interest.

IV. Conclusion

For the foregoing reasons, the Washington Utilities and Transportation Commission respectfully requests the FCC to reconsider its First Report and Order in the manner set forth above.

Dated this 27th day of September 1996 at Olympia, Washington.

CHRISTINE O. GREGOIRE
ATTORNEY GENERAL OF WASHINGTON



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